

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 22-cv-22538-ALTMAN/REID

DOMINIK KARNAS, *et al.*, on behalf
of himself and others similarly situated,
Plaintiffs,

v.

MARK CUBAN, *et al.*,
Defendants.

**PLAINTIFFS' NOTICE OF FILING SUPPLEMENTAL AUTHORITY IN SUPPORT
OF [ECF NO. 195] PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS'
OMNIBUS MOTION [ECF NO. 189] TO DISMISS THE SECOND AMENDED
COMPLAINT AND INCORPORATED MEMORANDUM OF LAW**

Plaintiffs submit, as supplemental authority in support of their Response in Opposition [ECF No. 195] to Defendants' Omnibus Motion to Dismiss the Second Amended Complaint [ECF No. 189], and in follow up on Plaintiffs' Notices of Filing Supplemental Authority filed in this action on March 14, 2024, [ECF No. 230], March 21, 2024 [ECF No. 242], March 27, 2024 [ECF No. 249], and May 29, 2024 [ECF No. 299] the recent orders by the Honorable Federico A. Moreno of the Southern District of Florida in *Harper v. O'Neal*, 23-cv-21912-FAM: (1) granting in part and denying in part defendants' motion to dismiss plaintiffs' amended complaint, ECF No. 91 (S.D. Fla. Aug. 16, 2024) ("Motion to Dismiss Order"); and (2) denying defendants' motion to strike plaintiffs' class allegations, ECF No. 94 (S.D. Fla. Aug. 16, 2024) ("Motion to Strike Order").

In *Harper v. O'Neal*, the plaintiffs filed a class action suit against Shaquille O'Neal, Astrals LLC, Astrals Holding, LLC, and Astrals Operations LLC for their promotion, offer, and sale of unregistered securities in the form of Astrals NFTs and Galaxy tokens created by the Astrals project in violation of Sections 5, 12(a)(1), and 15 of the Securities Act, 15 U.S.C. §§ 77e(a) and 77o. *See* Motion to Dismiss Order at 1, 5.

First, in the Motion to Dismiss Order, Judge Moreno denied defendants' motion to dismiss claims that (1) the crypto assets at issue constituted securities under the *Honey* test and applicable

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securities law; and (2) Defendant O'Neal was a statutory "seller" engaged in the solicitation of sales of those unregistered securities. *Id.* at 4, 16.

Second, in the Motion to Strike Order, Judge Moreno denied the motion to strike plaintiffs' class allegations as premature, "as potential barriers may fall away or at least become more manageable after discovery," in favor of deciding class certification when the motion is filed and fully briefed. *See* Motion to Strike Order at 1–2.

Dated: August 16, 2024

Respectfully submitted,

By: /s/ Adam M. Moskowitz

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was filed on August 16, 2024, via the Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

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